Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1221

EDWARD FLYNN, et al.,

Petitioners,

vs.

HARRIET BAUMAN,

Respondent.

REPLY OF PETITIONERS TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Respondent's argument essentially is that since a constitutional violation cognizable under the civil rights acts is more serious than an ordinary tort, it was proper for the court of appeals to recognize this disparity by giving greater dignity to the constitutional violation through an application of a longer state statute of limitations. Respondent

wrongly assumes, as did the court of appeals, that the nature of the federal cause of action justifies a reluctance to apply state law.

It has long been held by this Court that in the absence of a federal limitation statute, the applicable statute of the forum state which governs the closest analogous state action will control. *O'Sullivan* v. *Felix,* 233 U.S. 318 (1914).

By its decision in this case, and in *Beard* v. *Robinson,*[1] 563 F.2d 331 (7th Cir. 1977), the court of appeals has departed from this established precedent and in its stead has promulgated a federal imperative in favor of longer limitations periods for civil rights actions. Although the court in *Beard*, 563 F.2d at 334, noted that the borrowing of state limitations periods is conditioned on their being consistent with the policies underlying federal rights of action, there is no suggestion that Illinois' two-year limitations period for actions involving personal injuries would in any way emasculate the rights of plaintiffs in civil rights actions.

Both the court of appeals and respondent have ignored the public policy of Illinois embodied in its limitations statutes. In Illinois, a statute of limitations is designed to afford an opportunity to prepare a defense. *Halberstadt* v. *Harris Trust & Savings Bank,* 55 Ill. 2d 121, 125 (1973). To this end Illinois has stated that the limitation period for personal injuries is two years. Respondent has neglected to posit any suggestion that the defendants here will be better able to gather and preserve evidence for a defense of an alleged constitutional violation rather than an action in tort based upon the same facts.

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[1] A petition for certiorari in *Beard* is pending before this Court under Docket No. 77-1203.

Absent review by this Court, defendants, and other state and municipal employees will be exposed to stale civil rights claims thereby preventing the gathering of evidence for a defense.

CONCLUSION

For the foregoing reasons, and the reasons presented in petitioners' original Petition, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals for the Seventh Circuit.

Respectfully submitted,

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